

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

**Advanced Television Services and
Their Impact upon the Existing
Television Broadcast Service**

MB Docket No. 87-268

Directed to: The Commission

PETITION FOR RECONSIDERATION

Dr. Joseph A. Zavaletta (“Zavaletta”), by and through his attorneys, hereby respectfully submits this Petition for Reconsideration with regard to a portion of the Commission’s *Seventh Report* in the above-captioned proceeding.¹

As discussed in more detail below, Zavaletta hereby seeks reconsideration of the final DTV Channel assignment made in Appendix B to the *Seventh R&O*. Zavaletta is the licensee of Station KVAW(TV), Eagle Pass, Texas (the “Station”), which operates on analog channel 16, and has been assigned DTV channel 18. In Appendix B to the *Seventh R&O*, the Commission made the Station’s final assignment of DTV Channel 18.

As provided herein, the public interest would be served by changing the Appendix B facilities for the Station from Channel 18 to Channel 24, with the changes to the facilities as set forth in Exhibit A. Further, the proposed change will meet the more stringent interference standards set forth in the *Seventh R&O* with respect to post-transition digital facilities. Finally, in light of the fact that the transition is a mere 480 days from now, the grant of the instant Petition, and the assignment of Channel 24 to the Station would not cause undue injury to any other party, and would best serve the public interest.

¹ *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcasting Service*, Seventh Report and Order, 22 FCC Rcd 15,581 (2007) (“*Seventh R&O*”). The *Seventh R&O* was published in the Federal Register on September 26, 2007, 72 Fed. Reg. 54,720 (Sept. 26, 2007).

DISCUSSION

Under the proposed change to the Station's DTV assignment, the post-transition DTV channel would change from Channel 18 to Channel 24. The attached Engineering Statement at Exhibit D demonstrates that the proposed change would not cause impermissible interference to any station, even under the more stringent 0.1 percent interference standard adopted in the *Seventh R&O*.² The only cognizable predicted interference would be caused to post-transition operations of Station KVEO-DT, but the interference would be caused to only 903 persons, which is 0.00131% percent of the population served by Station KVEO-DT.

In order to effectuate the change in channel, Zavaletta proposes the change the transmitter site of the Station to a new tower. To this end, Zavaletta engaged an FAA Consultant to ensure that the proposed site would comply with FAA guidelines so that the Commission's limited resources would not be expended unnecessarily. The FAA Consultant specifically determined that the proposed site would comply with the FAA guidelines for locating so-called "tall" towers in the area.

Zavaletta acknowledges that he is seeking extraordinary relief in tendering the instant Petition at this time, and to the extent necessary, seeks waiver of the Commission's rules to permit the instant request be considered. Under applicable Commission precedent, a waiver request must be given a "hard look" and shall be granted if the underlying purpose of the affected rule is not undermined.³

In the instant matter, Zavaletta seeks Commission consent to change the channel election for Station KVAW, and to change the technical parameters of the Station. The Commission imposed the channel election process so to permit the orderly assignment of DTV channels and the clearing of the out-of-core spectrum.⁴ However, in the *Seventh R&O*, the Commission granted at least 10 changes in channel assignments that differed from the licensee's initial channel election.⁵ In these cases, the Commission

² *Seventh R&O*, at ¶ 93.

³ *See WAIT Radio v. FCC*, 459 F.2d 1203 (1972).

⁴ *In the Matter of Second Period Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18,279, ¶22 (2004).

⁵ *Seventh R&O*, ¶74.

considered the technical impact of the change in the Appendix B facility, and where no impact would be caused to other stations, granted the channel change.⁶ Similar treatment is sought in the instant matter since no impermissible interference will be caused to other stations, and the attached Engineering Statement demonstrates that the proposed facilities comply with the Commission's DTV technical requirements.

Further, in adopting the changes in the *Seventh R&O*, the Commission chose to make changes in digital authorizations that would have otherwise been prohibited under the "Filing Freeze".⁷ Thus, the Commission has already determined that the underlying purpose of the imposition of the freeze on filing modification proposals is not undermined when adopting changes to digital facilities during this rulemaking proceeding.

Finally, and perhaps most important, is that none of the changes proposed herein can be implemented prior to the termination of service of Station KVUE(TV), Austin, Texas (analog channel 24), and Station KHCE-TV, San Antonio, Texas (analog channel 23). As specified in Appendix B, both facilities have selected other post-transition digital channels. The Commission acknowledged in the Third Periodic Review that there will be digital stations that cannot commence operations until existing operations on other stations cease, and tentatively concluded that the broadcasters will need to closely coordinate their efforts.⁸ In the instant matter, Zavaletta pledges to stand by and not commence digital operations on Channel 24 until both Station KVUE and Station KHCE-TV terminate operations on their respective analog channels.

⁶ *Id.* ("Furthermore, none require waiver of the 0.1 percent interference standard.").

⁷ *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (MB 2004).

⁸ *In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, ¶91 (2007)

CONCLUSION

Therefore, it is clear that the Commission's goals of an efficient use of the spectrum will be met by the instant proposal, and also it is clear that the current Commission's rules and policies will not be undermined by the grant of the instant proposal. The proposed change is fully compliant with the technical requirements for digital stations, even considering the 0.1% interference standard. As a result, there will be no immediate impact upon the DTV Transition, and will cause no hardship to any other party.

For the reasons set forth herein, Dr. Joseph A. Zavaletta hereby seeks limited reconsideration of the *Seventh R&O* so that the instant proposal for Station KVAW-DT, Eagle Pass, Texas, may be implemented.

Respectfully submitted

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EXHIBIT A

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of DR. JOSEPH A. ZAVALETTA, licensee of KVAW in Eagle Pass, Texas, in support of his Petition for Reconsideration of the Commission's Seventh Report and Order concerning its assignment of digital television (DTV) station operating parameters for all full-power television facilities in the United States.

It is proposed herein to change the KVAW-DT assignment from Channel 18 to Channel 24 at a new site, and with sufficient power and height to allow coverage of Eagle Pass with the requisite city-grade contour.

Allotment parameters are provided in Exhibit B, and a contour map is included as Exhibit C. As shown, the city of Eagle Pass is located within the predicted 48 dBu contour.

In Exhibit D, we provide an interference analysis with respect to post-transition DTV facilities. It concludes that the allotment proposed herein meets the stringent 0.1 percent interference standard to all facilities of concern.

I declare under penalty of perjury that the foregoing statements and the attached exhibits, which were prepared by me or under my immediate supervision, are true and correct to the best of my knowledge and belief.



KEVIN T. FISHER

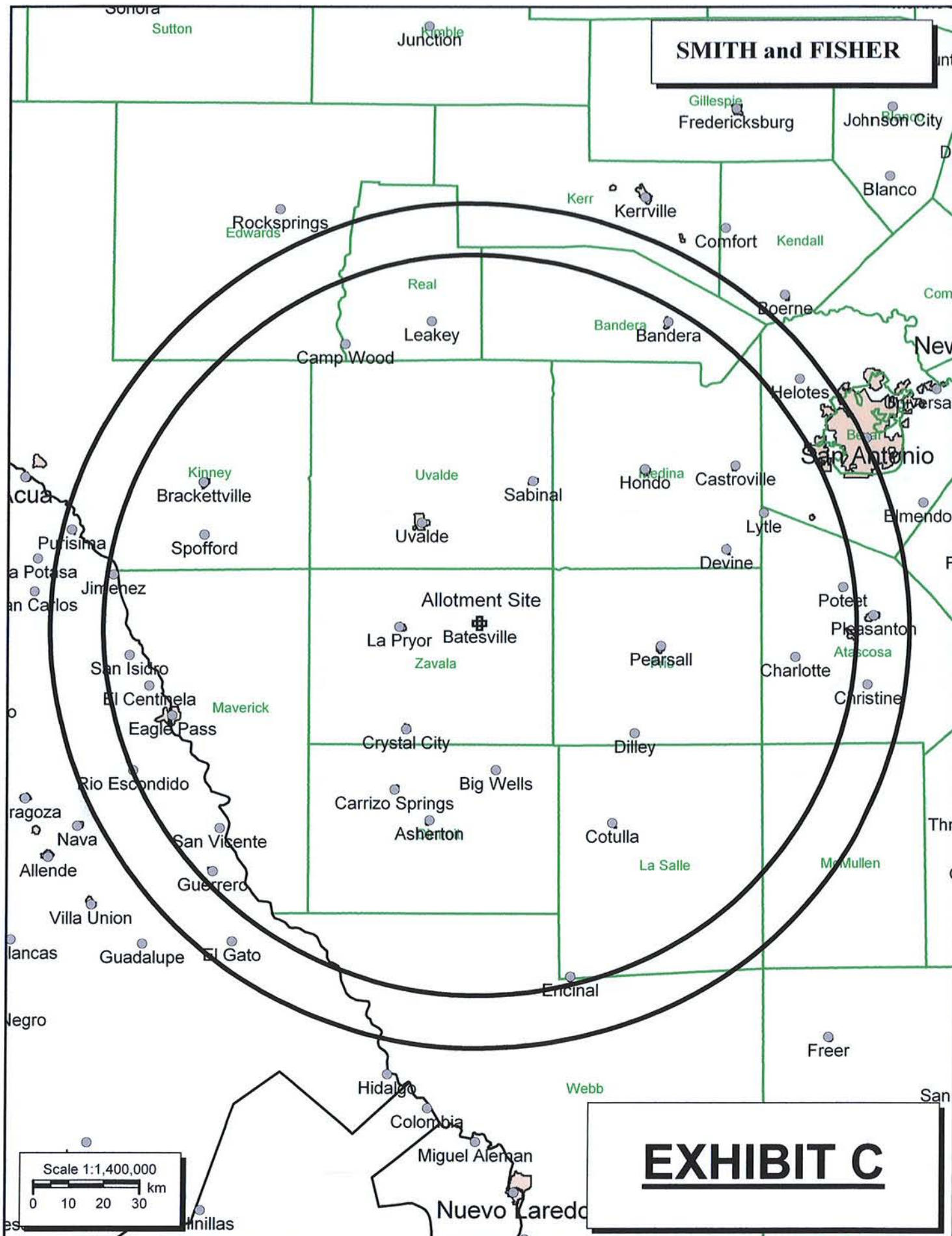
October 25, 2007

EXHIBIT B

PROPOSED ALLOTMENT PARAMETERS

PROPOSED KVAW-DT
CHANNEL 24 – EAGLE PASS, TEXAS

ERP (main-lobe, maximum)	1000 kw
Antenna Height Above Average Terrain	600 meters
Antenna Type	Omnidirectional
Geographic Coordinates	28-57-03 N 99-37-03 W



INTERFERENCE STUDY
PROPOSED KVAW-DT
CHANNEL 24 – EAGLE PASS, TEXAS

The instant proposal specifies an ERP of 1000 kw (omnidirectional) at 600 meters above average terrain, which we have determined to be allowable under the FCC's 0.1 percent interference standard with respect to various DTV facilities.

We looked at the interference situation with respect to facilities as they will exist on or before February 17, 2009, the date by which all stations will be operating with the digital facilities recently adopted in the Commission's DTV Table of Allotments. The only station potentially affected will be KVEO-DT, Channel 24 in Brownsville, Texas.

In evaluating the interference effect of this proposal, we have relied upon the V-Soft Communications "Probe III" computer program, which has been found generally to mimic the FCC's program. In conducting our studies, we employed a cell size of 1.0 kilometers and an increment spacing of 0.1 kilometer along each radial. In addition, we utilized the 1990 U.S. Census. Changes in interference caused by the proposed KVAW-DT allotment to other pertinent stations are tabulated in Exhibit E-2.

As shown, the proposed KVAW-DT allotment would not significantly increase the amount of predicted interference to the service population of post-transition KVEO-DT.

A Longley-Rice interference study also reveals that the proposed KVAW-DT facility does not cause interference within the protected 74 dBu contour of any potentially affected Class A low power television station.

Therefore, this proposal meets the FCC's interference standards for changes to the DTV Table of Allotments.

EXHIBIT D-2

INTERFERENCE STUDY SUMMARY

PROPOSED KVAW-DT
CHANNEL 24 – EAGLE PASS, TEXAS

<u>Call Sign</u>	<u>City, State</u>	<u>CH.</u>	<u>Coverage Population</u>	<u>Interference Population From KVAW-DT</u>	<u>%</u>
KVEO-DT Post-Transition	Brownsville, TX	24	686,764	903	0.1